

REMARKS

Claim Rejections

In view of the following remarks, reconsideration of the outstanding office action is requested and the rejection is respectfully traversed.

Claims 1, 9, 11, 13, 17-19, 25, 26, and 29 have been rejected under 35 U.S.C. §103(a) as obvious over Sandhage et al. (US Patent No. 4,077,406) in view of Fischer et al. (US Patent No. 4,004,565). The Examiner explained that it would have been obvious to combine the teachings of Sandhage et al., which discloses a pellet implanter for the subcutaneous implantation of pellets through a hypodermic needle, with the Fischer et al. patent which discloses a clip for implanting projectiles in animals containing a colored biologically active agent.

These prior art references do not suggest the claimed subject matter of the present invention. The following claim limits distinguish the prior art. Patent claim 1 contains the limitation "a plurality of biologically active pellets each pellet color-coded to represent a particular medicament[.]" Claim 9 states, "a dosing pellet magazine with each pellet color-coded to represent a particular biologically active medicament." Patent claim 13 states, "a plurality of medicaments coloring each selected medicament with a unique color to represent the selected medicament." Claim 18 is also a nonobvious limitation over the prior art references because it states "a dosing syringe body loaded with a plurality of dosing pellets, each color-coded to represent a particular medicament[.]"

Combining the teachings of Sandhage et al. and Fischer et al. merely suggests a pellet implanter containing a clip or magazine filled with one color of biologically active projectile

intended to identify a dose of one specific medicament. All bullets within that clip would be the same color. Therefore, only one bullet and one medicament are administered in a single dose.

Applicant's present invention provides a pellet implanter with a color coding scheme for combining dissimilar medicament doses in the same package. For example, a plurality of dosing pellets could be stacked in the package, each package containing a dissimilar medicament. The combined set of medicaments could then be administered simultaneously through the same implanting needle. As such, the combination of these references does not render the current invention obvious because it does not suggest multiple and varied medicament doses administered simultaneously. A reference cannot make an invention obvious if it does not suggest the combination of conditions defined by the claims, *In re Dance* (Fed. Cir. 1998).

Further, the primary reference, Sandhage et al., was disclosed and considered in the original patent application. A cited reference cannot as a matter of law create a new question of patentability, *In re Portola Packing, Inc.* (Fed. Cir. 1997). The secondary reference, Fischer et al., was submitted with the disclosure with the appropriate fee so there is nothing new. As such, there are no meaningful, new questions and all claims as filed should be allowed.

With regard to the remaining rejections, each of claims 2-8, 10, 12, 14-16, 20-24, 27, and 28 are dependent claims that depend from base claims that should be allowed, hence the examiner's rejections with regard to these claims are believed to be moot.

In view of the foregoing, all the claims pending in the case are considered to be patentable over the cited prior art of the record.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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